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HONG LEONG YAMAHA MOTOR SDN BHD v. KETUA PENGARAH KASTAM JABATAN KASTAM DIRAJA MALAYSIA

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COURT OF APPEAL, PUTRAJAYA
S NANTHA BALAN JCA
AZIMAH OMAR JCA
CHOO KAH SING JCA
[CIVIL APPEAL NO: B-01(A)-873-12-2022]
30 JANUARY 2024

C

Abstract – *In interpreting a provision of a taxing legislation, in absence of ambiguity, one must apply the plain and literal meaning of the words used in that provision. One may not, by applying the purposive approach, put any limitation as to the meaning of any of the words used in that provision. For example, under item 1, column (4), para. (c) to Schedule C of the Sales Tax (Persons Exempted From Payment Of Tax) Order 2018, the meaning of the words 'finished goods' may not be limited to only 'finished taxable goods'.*

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CUSTOMS AND EXCISE: *Sales tax – Sales Tax (Persons Exempted From Payment Of Tax) Order 2018, Schedule C, item 1, column (4), para. (c) – Director General of Customs ('DG') decided motorcycle components imported by manufacturer of motorcycles, which were classified as 'finished non-taxable goods', liable for payment of sales tax – Whether motorcycle components exempted from payment of sales tax – Whether DG had legal basis to impose additional condition in exemption certificate by limiting meaning of 'finished goods' to only 'finished taxable goods'*

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WORDS AND PHRASES: *'finished goods' – Sales Tax (Persons Exempted From Payment Of Tax) Order 2018, Schedule C, item 1, column (4), para. (c) – Whether meaning of 'finished goods' could be limited to only mean 'finished taxable goods' – Whether in interpreting meaning of 'finished goods', court ought to apply plain and literal meaning or purposive approach – Whether Director General of Customs had legal basis to impose additional condition in exemption certificate by limiting meaning of 'finished goods' to only 'finished taxable goods'*

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The appellant was a manufacturer of motorcycles, while the respondent was the Director General of Customs ('DG'). For manufacturing motorcycles below 250cc, the appellant imported various motorcycle components ('goods'). These goods were subsequently imposed with sales tax by the DG. The DG decided that there was sales tax due and payable by the appellant in respect of goods imported by the same during the period between September 2018 and June 2019. The DG opined that the Sales Tax (Persons Exempted From Payment Of Tax) Order 2018 ('Exemption Order 2018'),

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which was relied on by the appellant, to contend that the goods were exempted from sales tax, was not applicable. Hence, pursuant to s. 38 of the Sales Tax Act 2018 ('STA'), the DG issued various bills of demand to the appellant ('DG's decision'). Dissatisfied, the appellant filed three applications for judicial review at the High Court, for an order of *certiorari* to quash the DG's decision. These applications were consolidated and heard together. At the High Court, the appellant contended that the goods, which fell under item 1, column (3) to Schedule C of the Exemption Order 2018, ought to be exempted from the payment of sales tax because they were used in the manufacturing of 'finished goods'. Hence, after the appellant filed for a sales tax exemption certificate for the goods, the customs authority, at the time it issued the said exemption certificate to the appellant, had committed an error by providing an additional condition (in condition No. 3 of the exemption certificate) that the exemption could only be granted to goods that are used solely in the manufacturing of 'finished taxable goods', and not to the 'finished non-taxable goods', which the appellant's goods were classified as. Nevertheless, the High Court Judge ('HCJ'), after considering, among others, that since the appellant was engaged in the manufacturing of goods (as defined under s. 2 of the STA) and was liable to register with the DG as a 'registered manufacturer' under ss. 12 and 13 of the STA, the term 'finished goods' under item 1, column (4), para. (c) to Schedule C of the Exemption Order 2018 must necessarily mean to refer to 'finished taxable goods', dismissed the appellant's applications ('HC's decision'). Aggrieved, the appellant filed the present appeal. The main issue that arose was whether the DG had any legal basis to impose any additional condition by limiting the term 'finished goods' under the Exemption Order 2018 to only refer to 'finished taxable goods'.

Held (allowing appeal)
Per Choo Kah Sing JCA delivering the judgment of the court:

(1) There were two qualifications for a manufacturer to be liable to register as a registered manufacturer under the STA. The first qualification was that the finished goods must be taxable goods in nature. However, in the present case, the DG admitted that the appellant was a registered manufacturer under the STA, and yet, the appellant's finished goods, *ie*, motorcycles below 250cc, were finished non-taxable goods. Hence, the HC's reasoning *vis-à-vis* the fact that the appellant was a registered manufacturer, therefore, the finished goods in item 1 of column (4) of Schedule C must be referring to finished taxable goods could not give any justification as to why the appellant was liable to register as a registered manufacturer when the appellant's finished goods were finished non-taxable goods. There was a flaw in the HCJ's reasoning. The appellant was registered under the STA because it had satisfied both qualifications. It was possible for a registered manufacturer to manufacture both finished taxable goods and finished non-taxable goods.

A For this reason, it was legally comprehensible for the appellant to register as a registered manufacturer under the STA, and to also be manufacturing finished non-taxable goods. Therefore, focusing on ss. 12 and 13 of the STA as the reason for the appellant to be liable to pay the sales tax was not justifiable. The mere fact that the appellant was a B registered manufacturer could not satisfactorily determine the question of whether the term in para. (c) of column (4) only referred to finished taxable goods. (paras 17-20)

(2) The HCJ presupposed the appellant to be fully aware that the 'finished goods' under the Exemption Order 2018 referred to 'finished taxable C goods', otherwise, the appellant would not have to register for tax exemption under the STA. This presupposition was erroneous. In the first place, the certification of the sales tax exemption was for exemption of the sales tax with respect to 'raw materials, components and packaging materials and manufacturing aids' which were imported and D meant for the manufacture of the appellant's finished goods. All imported goods (be it finished goods, raw materials, components or packaging materials) were liable for payment of import tax, sales tax and/or any other taxes as prescribed by the law (see s. 8 of the STA) unless they have been exempted. In the instant case, the appellant paid the import tax and sought exemption of the sales tax. Therefore, the E certification for exemption of sales tax was meant for the imported goods which were for the manufacture of finished goods. The certification for exemption of sales tax would not necessarily lead to the conclusion that the finished goods must be finished taxable goods. (paras 22-24)

F **(3)** The HCJ erred in accepting that item 1, column (4), para. (e) could empower the DG to have such vast power to change the wording in the Exemption Order 2018 by rewording them as in condition No. 3 of the exemption certificate. Although the DG was permitted to impose any G conditions, the conditions imposed must be other than those already stated in column (4). It clearly stated 'any other conditions'. Hence, the DG had no power to add or to remove any word(s) in those conditions which have already been stated in column (4) in item 1 of Schedule C. Schedule C was a *Gazette* order and has been passed through proper legislation. If there was any change, it must be done through proper H legislation too. (paras 28 & 30)

(4) The DG could not impose an additional condition by limiting the meaning of the words 'finished goods' to mean 'finished taxable goods'. The former carried a very different connotation than the latter. 'Finished I goods' meant finished goods, be it taxable or non-taxable. The insertion of the word 'taxable' after the word 'finished' and before the word 'goods' brought a limited meaning to the original words of 'finished goods'. As such, the HCJ erred by holding that the power granted to the

DG could extend to changing the original words, or adding word(s) into the original words, in Schedule C. This prohibition was more so when the modification would lead to a substantial change of the meaning. If the drafters intended the words 'finished goods' to mean 'finished taxable goods' in item 1 of Schedule C, they could have done so like in other parts of the Schedules. (paras 31 & 32)

(5) The Ministry of Finance ('MoF') had, on 15 October 2018, issued a letter which approved exemption of sales tax to companies which held franchise for manufacturing vehicles locally for vehicle components that were imported or purchased from local registered manufacturer or licensed warehouse ('MoF's letter'). The appellant was one of those approved franchise holders for the category of motorcycle. The appellant relied on this approval by the MoF to seek exemption of payment of sales tax for the goods for the purpose of manufacturing its finished goods. The MoF's letter did not limit or specify that the finished goods must be finished taxable goods. A right for exemption of paying sales tax for the goods imported was accorded by the MoF for the period from 1 September 2018 to 31 August 2019. Therefore, this right could not be modified by the DG at his whim by qualifying the plain language used in the MoF's letter and the law. (paras 34-36)

(6) The respondent's reliance on para. 5(4) of the Exemption Order 2018 was not agreed because it referred to dispute over class of goods subject to exemption in column (3) of Schedule C. It does not deal with the meaning of 'finished goods' in column (4) of Schedule C. Insofar as the goods sought for exemption of sales tax under column (3) was concerned, there was no dispute over whether they were or were not included in the class of goods for exemption. Hence, the explanation and deposition in affidavits attempting to explain the purpose and object of the Exemption Order 2018 that finished goods meant only finished taxable goods could not aid the court to interpret the words 'finished goods' in the manner the DG intended them to be. (paras 37 & 38)

(7) Although the apex court had pronounced that purposive approach of statutory interpretation could extend to taxing law, in a circumstance where the impugned word(s) is clear and unambiguous, like in the present case – 'finished goods', the court is duty-bound to apply the plain and literal meaning of the words used in the Exemption Order 2018. From the MoF's letter, the conditions, as the Minister deemed fit to impose, did not qualify the exemption of sales tax for imported goods must be for manufacture of finished taxable goods. After having considered the plain language used in the Exemption Order 2018 and the exemption of sales tax accorded by the Minister in the MoF's letter, the court was convinced and satisfied that the words 'finished goods' could not be limited to only 'finished taxable goods'. (paras 40, 42 & 43)

(8) If the respondent conceded that the DG was exercising his power to impose additional condition by limiting the meaning of finished goods to only finished taxable goods, this simply proffered two things. First, the meaning of 'finished goods' must include 'finished non-taxable goods', otherwise, why would there be a need to impose the additional condition to qualify the meaning of 'finished goods'. Second, it was possible that the DG's action could have prompted the Legislature to amend the Exemption Order 2018, particularly, item 1, column (4) of Schedule C *via* the Exemption (Amended) Order 2022. The present item 1 of Schedule C is clear in that the manufacture of finished goods must be finished taxable goods or finished taxable goods but have been exempted from sales tax. The latter finished goods would enjoy zero sales tax. In the event before the amendment to para. (c), column (4) of Schedule C, the words 'finished goods' were meant to be finished taxable goods, then there was no reason for the Legislature to make the amendment in 2022. This amendment to the Exemption Order 2018 have bolstered the contention that the meaning of the original wording in column (4) of Schedule C was not limited to only finished taxable goods. (paras 44, 45 & 50)

Case(s) referred to:

Foo Loke Ying & Anor v. Television Broadcasts Ltd & Ors [1985] 1 CLJ 511; [1985] CLJ (Rep) 122 SC ***(refd)***

Hong Leong Yamaha Motor Sdn Bhd v. Ketua Pengarah Kastam & Anor & Other Cases [2023] CLJU 111; [2023] 1 LNS 111 HC ***(refd)***

Krishnadas Achutan Nair & Ors v. Maniyam Samykano [1997] 1 CLJ 636 FC ***(refd)***

National Land Finance Co-Operative Society Ltd v. Director General Of Inland Revenue [1993] 4 CLJ 339 SC ***(refd)***

Palm Oil Research And Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd [2004] 2 CLJ 265 FC ***(refd)***

Legislation referred to:

Interpretation Acts 1948 and 1967, s. 17A

Sales Tax (Persons Exempted From Payment of Tax) Order 2018, paras 2, 3, 5(4), Schedule A, items 35, 66, Schedule C items 1, 5

Sales Tax Act 2018, ss. 2, 8, 12(1), 13(1), 35(1)(b), (3)(a), 38(1)

For the appellant - S Saravana Kumar & Yap Wen Hui; M/s Rosli Dahlan Saravana Partnership

For the respondent - Liew Horng Bin, Rahazlan Affandi Abdul Rahman & Noor Atiqah Zainal Abidin SFCs

[Editor's note: For the High Court judgment, please see Hong Leong Yamaha Motor Sdn Bhd v. Ketua Pengarah Kastam & Anor And Other Cases [2023] CLJU 111; [2023] 1 LNS 111 (overruled).]

Reported by Syamim Ariffin

JUDGMENT

Choo Kah Sing JCA:

Introduction

[1] The appellant, Hong Leong Yamaha Motor Sdn Bhd, was the applicant in three judicial review applications at the High Court. The three judicial review applications were consolidated on 28 February 2020. On 24 September 2020, the High Court granted the appellant leave to proceed with the consolidated judicial review application.

[2] The appellant in the consolidated judicial review application sought for an order of *certiorari* to quash the decisions of the Director General of Customs ("DG of Customs") who had decided to impose sales tax ("the impugned sales tax") on various motorcycle components ("the goods") which were imported and purchased by the appellant to be used in its manufacturing of motorcycles below the engine capacity of 250 cubic centimetres (or 250cc) ("the appellant's finished goods"). On 6 December 2022, after having heard the arguments of the substantive judicial review, the High Court dismissed the appellant's application. Dissatisfied with the High Court's decision, the appellant appealed before us.

The Salient Facts

[3] The three diagrams below depict the respective bills of demand issued by the DG of Customs and the respective taxable amounts which led to the appellant filing the three judicial review applications at the High Court to challenge the decisions of the DG of Customs.

No.	Date	Bill of Demand Amount (RM)	High Court Judicial Review
1	30.9.2019	13,351.77	BA-25-112-10-2019 (JR 112)
2	30.9.2019	134.03	
3	30.9.2019	8,327.99	
4	30.9.2019	30,527.49	
5	30.9.2019	620,463.10	
6	30.9.2019	607,936.19	
7	30.9.2019	548,660.67	
8	30.9.2019	7,612,708.49	
9	30.9.2019	9,593,966.29	
10	30.9.2019	7,301,392.29	
	TOTAL:	**26,337,468.31**	

No.	Date	Amount (RM)	High Court Judicial Review
1	27.11.2019	31,366.87	BA-25-139-12-2019 (JR 139)
2	28.11.2019	19,174.06	
3	28.11.2019	20,363.63	
4	28.11.2019	5,240.04	
5	28.11.2019	89,993.00	
6	3.12.2019	10,924.72	
7	3.12.2019	35,621.06	
8	3.12.2019	9,487.80	
9	3.12.2019	22,794.95	
10	3.12.2019	15,501.61	
11	4.12.2019	157,002.28	
12	4.12.2019	273,238.73	
13	4.12.2019	120,614.30	
14	4.12.2019	620,438.75	
15	4.12.2019	178,505.64	
	TOTAL:	**1,610,267.44**	

No.	Date	Amount (RM)	High Court Judicial Review
1	16.12.2019	2,963.51	BA-25-5-01/2020 (JR 5)
2	16.12.2019	8,103.92	
	TOTAL:	**11,067.43**	

[4] The DG of Customs relied on s. 38 of the Sales Tax Act 2018 (Act 806) ("STA 2018") to issue the bills of demand. Section 38(1) of the STA 2018 states as follows:

38 Payment of sales tax, *etc.*, short paid or erroneously refunded

(1) Where:

(a) the whole or any part of any sales tax due and payable, surcharge accrued, or penalty, fee or other money payable, under this Act has not been paid by a person; or

(b) the whole or any part of any sales tax due and payable, surcharge accrued, or penalty, fee or other money payable, after having been paid, has been erroneously refunded to a person,

the Director General shall demand from the person to pay the sales tax, surcharge, penalty, fee or other money, or the deficient sales tax, surcharge, penalty, fee or other money, or to repay the refund erroneously paid to him.

[5] The DG of Customs decided that there was a sales tax due and payable by the appellant for the goods imported by the appellant during the period between September 2018 and June 2019. The DG of Customs opined that the Sales Tax (Persons Exempted From Payment Of Tax) Order 2018 [PU(A) 210/2018] ("the Exemption Order 2018"), which the appellant had relied on to be exempted from paying sales tax on the goods imported by the appellant, was not applicable.

[6] In the exercise of his powers conferred in s. 35(1)(b) of the STA 2018, the Minister of Finance made the Exemption Order 2018. The Exemption Order 2018 has been in force since 1 September 2018.

[7] Paragraphs 2 and 3 of the Exemption Order 2018 state as follows:

2 Exemption from payment of sales tax

(1) Subject to paragraph 3, the persons specified in column (2) of Schedule A, Schedule B and Schedule C are exempted from the payment of sales tax on the goods specified in column (3) of Schedule A, Schedule B and Schedule C subject to the conditions specified in column (4) of Schedule A, Schedule B and Schedule C.

(2) The persons specified in column (5) of Schedule A, Schedule B and Schedule C shall produce to the proper officer of sales tax or the registered manufacturer, as the case maybe, as provided in sub-subparagraphs 4(a)(i) and 4(a)(ii), a certificate in the form as determined by the Director General and signed by the specified persons.

3 Extent of exemption

The exemption referred to in paragraph 2 shall be granted in full in respect of the goods specified in column (3) of Schedule A, Schedule B and Schedule C unless otherwise provided in the conditions specified in column (4) of Schedule A, Schedule B and Schedule C.

[8] The relevant Schedule in the Exemption Order 2018 is Schedule C, particularly item No. 1. It is instructive to note that item No. 1 of Schedule C, particularly column (4) conditions, was recently amended *via* the Sales Tax (Persons Exempted from Payment of Tax) (Amendment) Order 2022 [PU(A) 380/2022] ("the Exemption (Amended) Order 2022") which came into force on 1 January 2023.

[9] Before column (4) of item No.1 of Schedule C was amended, the then column (4) of item No. 1 of Schedule C read as follows:

JADUAL C/SCHEDULE C

(1) Item No.	(2) Persons	(3) Goods Exempted	(4) Conditions	(5) Certificate to be signed by
1.	Any registered manufacturer	Raw materials, components and packaging materials excluding petroleum	(a) That the goods are approved by the Director General; (b) that the goods are imported or purchased from another registered manufacturer or a warehouse licensed under section 65 of licensed manufacturing warehouse under 65A of the Customs Act 1967; (c) that the goods shall be used solely in the manufacturing of **finished goods** (emphasis added) of the person mentioned in column (2); (d) that the person mentioned in column (2) shall pay the sales tax on any goods that cannot be accounted for; (e) any other conditions the Director General deem fit to impose.	Registered Manufacturer

[10] The appellant contended that the goods under column (3) of Schedule C that it had imported ought to be exempted from payment of sales tax because they were used in the manufacturing of finished goods of the appellant company. The appellant further contended that para. (c) of column (4) Conditions stated clearly that "the goods shall be used solely in the manufacturing of **finished goods** (emphasis added) of the person mentioned in column (2)". It did not state the finished goods has to be finished taxable goods. When the appellant applied for the sales tax exemption certificate for the goods it had imported, the customs authority issued the exemption certificate to the appellant. However, the exemption certificate was issued subject to certain conditions. One of the conditions (condition No. 3) is stated as follows:

> 3. The raw materials, components and packaging materials shall be used solely in the manufacturing of **finished taxable goods** of the registered manufacturer; (emphasis added)

[11] The DG of Customs contended that the appellant's finished goods, *ie*, motorcycles below 250cc, were non-taxable finished goods, as such the condition No. 3 was not fulfilled. In this circumstance, the DG of Customs submitted that the appellant's goods under column (3) of Schedule C were not qualified to claim exemption of sales tax.

[12] The position taken by the DG of Customs is that the exempted goods in column (3) of Schedule C were meant for goods intended to be used solely in the manufacturing of finished taxable goods and were not meant for manufacturing of non-taxable finished goods.

The Decision Of The High Court

[13] Before the High Court, one of the issues raised for determination, which is the crux of the appeal before us, was as follows:

> Whether the DG of Customs has any legal basis to impose additional condition by limiting the term "finished goods" under the Sales Tax (Person Exempted from Payment of Tax) Order 2018 (or the Exemption Order 2018) to only referred to taxable finished goods.

[14] The reasons for the decision of the learned High Court Judge are found in the following paragraphs of her judgment (reported as [2023] 1 LNS 111):

> [27] The argument put forth by the applicant is that the word "taxable" before the words "finished goods" does not appear in the Exemption Order (item 1 Schedule C). It was therefore argued that the finished goods were not taxable.
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> [28] Respectfully, this court cannot agree with this contention. In the considered view of this court, the Exemption Order must be read as a whole, including together with the Act from which it derived its powers from. Section 35 of the Act is the enabling provision of the Exemption Order, allowing the Minister to legislate the Exemption Order.

A [29] In this regard, this court agrees with the argument by the learned Senior Federal Counsel who made reference to sections 2, 12 and 13 of the Act. Section 2 of the Act read together with section 12 of the Act, a 'registered manufacturer' is one who manufactures 'taxable goods' who is liable to be registered under section 13 of the same Act.

B [30] In the considered view of this court, the applicant was well aware that the Exemption Order stated finished taxable goods. In the even (*sic*) the goods were not taxable, there was no necessity for the applicant to register for tax exemption under the Act.

C [31] Moreover, item 1 Schedule C allows the Director General to impose other conditions as the Director General deem (*sic*) fit. Therefore (*sic*) this court is satisfied this ground is without merit.

The Findings Of This Court

[15] It can be distilled from para. 29 of the learned High Court Judge's judgment that since the appellant was engaged in the manufacture of goods D (as defined in s. 2 of the STA 2018) and was liable to register with the DG of Customs as a registered manufacturer under ss. 12 and 13 of the STA 2018, therefore, the "finished goods" in para. (c) of column (4) Condition in Schedule C must necessarily mean to refer to finished taxable goods.

[16] Sections 12(1) and 13(1) of the STA 2018 state as follows:

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> 12(1) The Minister may, by order published in the *Gazette*, determine the **total sale value** of **taxable goods** for the purpose of registration of any manufacturer under this Part.
>
> 13(1) Any manufacturer who is liable to be registered under section 12 shall apply to the Director General for registration as registered manufacturer in the prescribed form not later than the last day of the month following the month in which he is liable to be registered as referred to in paragraph 12(2)(a) or (b). (emphasis added)

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[17] We observe that there are two qualifications for a manufacturer to be liable to be registered as a registered manufacturer under the STA 2018. G First, the manufactured goods must be taxable goods. Second, the total sale value of the taxable goods must have exceeded the amount of the total sale value of taxable goods as determined by the Minister for such manufacturer to become liable to be registered.

H **[18]** The first qualification for a manufacturer to be liable to register as a registered manufacturer under the STA 2018 is indeed that the finished goods must be taxable goods in nature. However, in the present case, the counsel for the DG of Customs admitted that the appellant is a registered manufacturer under the STA 2018, and yet, that the appellant's finished goods, *ie*, motorcycles below 250cc, are non-taxable finished goods.

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[19] The High Court's reasoning *vis-à-vis* the fact that the appellant was a registered manufacturer, therefore, the finished goods in item 1 of column 4 Conditions of Schedule C must be referring to finished taxable goods could not justify as to why the appellant was liable to register as a registered manufacturer when the appellant's finished goods were non-taxable finished goods. On this score, we are of the view that the learned High Court Judge's reasoning is flawed.

[20] The appellant was registered under the STA 2018 because it had satisfied both the qualifications. It is possible for a registered manufacturer to manufacture both taxable finished goods and non-taxable finished goods. For this reason, it is legally comprehensible for the appellant to be registered as a registered manufacturer under the STA 2018, and to be also manufacturing non-taxable finished goods. Therefore, focusing on ss. 12 and 13 of the STA 2018 as the reason for the appellant to be liable to pay the sales tax was not justifiable. The mere fact that the appellant is a registered manufacturer could not satisfactorily determine the question of whether the term in para. (c) of column (4) Conditions – "… finished goods …" only referred to finished taxable goods.

[21] Paragraph (c) of column 4 Conditions of Schedule C of the Exemption Order 2018 did not state "finished taxable goods", it clearly stated "finished goods".

[22] The learned High Court Judge presupposed the appellant to be fully aware that the "finished goods" referred to in the Exemption Order 2018 referred to "finished taxable goods", otherwise, the appellant would not have to register for tax exemption under the STA 2018. In our view, this presupposition is erroneous.

[23] In the first place, the certification of sales tax exemption under the Exemption Order 2018 was not for the finished goods. The certification of the sales tax exemption was for exemption of the sales tax with respect to the "raw materials, components and packaging materials and manufacturing aids" which were imported and meant for the manufacture of the appellant's finished goods.

[24] All imported goods (be it finished goods, raw materials, components or packaging materials) are liable to payment of import tax, sales tax and/or any other taxes as prescribed by the law (see s. 8 of the STA 2018) unless they have been exempted. In this instant case, the appellant paid the import tax and sought an exemption to pay the sales tax. Therefore, the certification for exemption of sales tax was meant for the imported goods which were for the manufacture of finished goods. The certification for exemption of sales tax, therefore, would not necessarily lead to the conclusion that the finished goods must be finished taxable goods.

[25] The learned High Court Judge in para. 31 of the judgment opined that "item 1 Schedule C" (presumably referring to para. (e) of column (4) Condition) allowed the DG of Customs to impose other conditions as the DG of Customs deemed fit. As such, condition No. 3 was legally imposed by the DG of Customs in the exemption certificate.

[26] The diagram below depicts the different wording between the Exemption Order 2018 and the condition No. 3 attached with the exemption certificate:

Exemption Order 2018 para (c) column (4) Condition	Condition No. 3
that the goods shall be used solely in the manufacturing of **finished goods** (emphasis added) of the *person mentioned in column* (2)	*The raw materials, components and packaging materials* shall be used solely in the manufacturing of **finished taxable goods** (emphasis added) of the *registered manufacturer*

(emphasis added)

[27] The difference in the wording between the Exemption Order 2018 and the condition No. 3 is printed in italic. The critical part difference is the use of the terms "finished goods" and "finished taxable goods" (highlighted in bold) which is the crux of the contention in the appellant's appeal.

[28] We are of the considered view that the learned High Court Judge erred in accepting that para. (e) of column (4) Condition could empower the DG of Customs to have such vast power to change the wording in the Exemption Order 2018 by rewording them as in condition No. 3.

[29] Paragraph (e) of column (4) Conditions – states as follows:

> (e) any other conditions the Director General deem (*sic*) fit to impose.

[30] We are of the considered view that although the DG of Customs was permitted to impose any conditions, the conditions imposed must be other than those conditions which have already been stated in column (4) Conditions. It stated clearly "any other conditions". Hence, the DG of Customs has no power to add or remove word(s) in those conditions which have already been stated in column (4) Conditions in item No. 1 of Schedule C. Schedule C was a *Gazette* Order and has been passed through proper legislation. If there is any change, it has to be done through proper legislation too.

[31] The DG of Customs could not impose an additional condition by limiting the meaning of the words "finished goods" to mean "finished taxable goods". The former carries a very different connotation from the latter.

"Finished goods" means finished goods, be it taxable or non-taxable. The insertion of the word "taxable" after the word "finished" and before the word "goods" brings a limited meaning to the original words of "finished goods". Therefore, we could not agree with the learned High Court Judge that the power granted to the DG of Customs could extend to changing the original words, or adding word(s) into the original words, in Schedule C. This prohibition is more so when the modification would lead to a substantial change of the meaning.

[32] If the drafters intended the words "finished goods" to mean "finished taxable goods" in item 1 of Schedule C, they could have done so like in other parts of the Schedules. The words "finished taxable goods" were used in item 5 of Schedule C. The words "taxable goods" were used in items 35 and 66 of Schedule A as illustration. It was held that "Parliament does nothing in vain, the court must endeavour to give significance to every word of an enactment, and it is presumed that if a word or phrase appears in a statute, it was put there for a purpose and must not be disregarded" (see *Foo Loke Ying & Anor v. Television Broadcasts Ltd & Ors* [1985] 1 CLJ 511; [1985] CLJ (Rep) 122, p. 125, Supreme Court; see also *Krishnadas Achutan Nair & Ors v. Maniyam Samykano* [1997] 1 CLJ 636; [1997] 1 MLJ 94, pp. 100 to 101, FC).

[33] Going back to the issue for determination before the High Court, the counsel for the respondent submitted that the DG of Customs had the power under para. (e) of column 4 Condition of Schedule C to exercise his power to impose additional condition by limiting the term "finished goods" to only finished taxable goods, in other words, the counsel for the respondent had indirectly admitted that the word "finished goods" could also mean non-taxable finished goods, otherwise, why would the DG of Customs exercise his power to impose an "additional condition" by limiting the impugned term.

[34] On 15 October 2018, the Ministry of Finance issued a letter ("the MoF's, letter") to the then DG of Customs, Y Bhg Dato' Sri Subromaniam Tholasy to inform that the then Minister of Finance's decision in agreeing to approve the exemption of sales tax to companies which held the franchise for manufacturing vehicles locally for vehicle components that were imported or purchased from the local registered manufacturer or licensed warehouse. The relevant part of the letter his stated as follows:

> 2. Adalah dimaklumkan bahawa YB Menteri Kewangan selaras dengan peruntukan di bawah Seksyen 35(3)(a) Akta Cukai Jualan 2018 bersetuju meluluskan pengecualian cukai jualan kepada Syarikat pemegang francais kenderaan pemasangan tempatan atau mana-mana orang yang bertindak bagi pihak Syarikat pemegang francais tersebut ke atas komponen kenderaan yang diimport atau dibeli dari pengilang berdafatar tempatan atau Gudang berlesen di bawah Seksyen 65 atau Gudang Pengilangan Berlesen di bawah Seksyen 65A, Akta Kastam 1967, tertakluk kepada syarat berikut:

A
i) Syarikat yang diluluskan oleh MITI bagi permasangan kenderaan (Lampiran A), atau mana-mana orang yang bertindak bagi syarikat tersebut;

ii) Kompenen kenderaan yang dimport atau dibeli secara tempatan, tertakluk kepada syarat-syarat di Lampiran B;

B
iii) Komponen kenderaan dihantar ke kilang Syarikat pemasang kenderaan kontrak untuk digunakan secara langsung dalam proses pemasangan kenderaan; dan

iv) Tempoh pengecualian berkuatkuasa satu tahun mulai 1.9.2018 hingga 31.8.2019.

C
3. Berhubung pengecualian cukai jualan di perenggan 2, Menteri Kewangan di bawah Seksyen 35(3)(c) Akta Cukai Jualan 2018 memberi kuasa kepada Ketua Pengarah Kastam untuk membuat pembayaran balik cukai jualan yang telah dibayar bermula pada 1.9.2018 hingga 2 minggu selepas Tarikh surat kelulusan ini.

D
4. Surat Kementerian Kewangan rujukan (C)0.225/38(4) bertarikh 26.9.2018 adalah DIBATALKAN.

[35] The appellant was one of those approved franchise holders in "Lampiran A" for the category of motorcycle. The appellant relied on this approval by the Ministry of Finance to seek exemption of payment of sales
E tax for the goods for the purpose of manufacture of its finished goods. The MoF's letter did not limit or specify the finished goods must be finished taxable goods.

[36] A right for exemption of paying sales tax for the goods imported was
F accorded by the Ministry of Finance for the period from 1 September 2018 to 31 August 2019. Therefore, this right could not be modified by the DG of Customs at his whim by qualifying the plain language used in the MoF's letter and the law. Notwithstanding that, even if there was a doubt or ambiguity, then such doubt or ambiguity "must be construed in favour of the taxpayer". In *National Land Finance Co-operative Society Ltd v. Director General*
G *Of Inland Revenue* [1993] 4 CLJ 339, pp. 344 to 345, the then Supreme Court held as follows:

> There are ample authorities to show that Courts have refused to adopt a construction of a taxing Act which would impose liability when doubt exists. In *Re Micklewait* [1855] 11 Exch 452 it was held that a subject is not
H to be taxed without clear words. We realise that revenue from taxation is essential to enable Government to administer the country and that the Courts should help in the collection of taxes whilst remaining fair to tax payers. Nevertheless, we should remind ourselves of the principle of strict interpretation as stated by Rowlatt J in *Cape Brandy Syndicate v. I.R.C.* (*supra*):

I

> … in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used …
>
> It has also been said by the Judicial Committee in *Oriental Bank Corporation v. Wright* [1880] 5 AC 842, 856 "that the intention to impose a charge upon a subject must be shown by clear and unambiguous language".

[37] The counsel for the respondent submitted that the Minister (the Ministry of Finance), DG of Customs and relevant customs officer had deposed six affidavits to explain the reasons as to why the appellant was not entitled to tax exemption under item 1 of Schedule C of the Exemption Order 2018. The counsel for the respondent also referred to and relied on para. 5(4) of the Exemption Order 2018 that the Minister is the determining body to decide whether the appellant was liable to the sales tax imposed or otherwise. We could not agree with the respondent's counsel on the reliance of para. 5(4) of the Exemption Order 2018. Paragraph 5(4) of the Exemption Order 2018 states as follows:

> (4) If any question arises as to whether any particular goods are or are not included in the class of goods subject to exemption, such question shall be decided by the Minister.

[38] The above paragraph refers to a dispute over the class of goods subject to exemption in column (3) Goods Exempted of Schedule C, it does not deal with the meaning of "finished goods" in column 4 Conditions of Schedule C. The respondent's counsel has misconstrued the application of the said paragraph. Insofar as the goods sought for exemption of sales tax under column 3 Goods Exemption of Schedule C was concerned, there was no dispute over whether they were or were not included in the class of goods for exemption. Hence, the explanation and deposition in those affidavits attempting to explain the purpose and object of the Exemption Order 2018 that finished goods meant only finished taxable goods could not aid the court to interpret the words "finished goods" in the manner as the DG of Customs intended them to be.

[39] In *Palm Oil Research And Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* [2004] 2 CLJ 265; [2005] 3 MLJ 97, p. 108, the apex court decided that the purposive approach to statutory interpretation applies to all statutes including taxing statutes after the Interpretation (Amendment) Act 1997 (Act A996) came into effect on 25 July 1997 which inserted s. 17A of the Interpretation Acts 1948/1967 which states:

> In the interpretation of a provision of An Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

[40] Although the apex court has pronounced that the purposive approach of statutory interpretation could extend to taxing law, when the impugned word(s) is clear and unambiguous, like in the present case – "finished goods", then the court is duty-bound to apply the plain and literal meaning of the words used in the Exemption Order 2018. This court need not rely on the purposive approach of interpretation such as in *Palm Oil Research And Development Board Malaysia*. In that case, the ultimate issue was whether or not the subsidiary legislation, *ie*, the Palm Oil (Research Cess) Order 1979, which provided for the levying and collection of cess by the appellant from palm oil millers in respect of both crude palm oil and crude palm kernel oil was *ultra vires* the parent Act – Palm Oil Research and Development Act 1979. In our present case, there is no such conflict between the parent Act (STA 2018) and the subsidiary legislation (the Exemption Order 2018).

[41] The Minister of Finance exercised his power under s. 35(3)(a) of STA 2018 to issue the MoF's letter, and s. 35(3)(a) of the STA 2018 states as follows:

> (3) The Minister may, in any particular case and subject to such conditions as he deems fit:
>
> (a) Exempt any person or class of persons from payment of the whole or any part of the sales tax which may be charged and levied on any taxable goods manufactured or imported;

[42] From the MoF's letter, the conditions, as the Minister deemed fit to impose, did not qualify the exemption of sales tax for imported goods must be for manufacture of finished taxable goods. In other words, the MoF's letter could also cover exemption of sales tax for imported goods used for manufacture of non-taxable goods. The MoF's letter was issued specifically for the manufacturers of the automobile industry. Perhaps this was an incentive given to a specified group by the Government to promote the economy of the automobile industry in 2018.

[43] After having considered the plain language used in the Exemption Order 2018 and the exemption of sales tax accorded by the Minister in the MoF's letter, this court is convinced and satisfied that the words "finished goods" in item No. 1 para (c) in column 4 Condition of Schedule C could not be limited to only finished taxable goods.

[44] As alluded earlier, if the respondent's counsel concedes that the DG of Customs was exercising his power to impose additional conditions (in condition No. 3 of the exemption certificate) by limiting the finished goods to finished taxable goods, this simply proffers two things. First, the meaning of the term "finished goods" must include non-taxable finished goods in the first place, otherwise, why would there be a need to impose additional conditions to qualify or limit the meaning of "finished goods" in the second place. Second, it is possible that the DG of Customs' action could have

prompted the Legislature to amend the Exemption Order 2018, particularly item 1 column 4 Conditions of Schedule C *via* the Exemption (Amended) Order 2022 (PU(A) 380/2022). The present para. (c) of column 4 Conditions of Schedule C reads as follows:

(4) Conditions
(a) …;
(b) …;
(c) that the goods shall be used in the manufacturing of finished goods of:
(i) taxable goods; or
(ii) both taxable and exempted goods of the person mentioned in column (2);
(ca) …;
(cb) …;
(cc) …;
(d) …;
(e) …

[45] The present item 1 of Schedule C of the Exemption Order 2018 is clear in that the manufacture of finished goods has to be finished taxable goods or finished taxable goods but has been exempted from sales tax. The latter finished goods will enjoy zero sales tax. In the event before the amendment to para. (c) of column (4) Conditions of Schedule C, the words "finished goods" were meant to be finished taxable goods, then there is no reason for the Legislature to make the amendment in 2022.

Summary

[46] In the final analysis, this court finds that first, we could not agree with the learned High Court Judge's reasoning because the emphasis on ss. 2, 12 and 13 was incorrect and the approach adopted by Her Ladyship in coming to her decision lacked analysis of the law in order to determine whether the words "finished goods" were limited to only finished taxable goods.

[47] Secondly, the words "finished goods" in para. (c) of column 4 Conditions of item 1 of Schedule C could mean both non-taxable finished goods as well as finished taxable goods. The words were clear, unambiguous, unqualified and plain enough to be given a literal interpretation. It is not necessary to apply the purposive approach of statutory interpretation because there is no ambiguity of the meaning and the application of the law.

[48] Thirdly, the ambiguity arose because of the DG of Customs' act of qualifying the impugned words by limiting them to mean only finished taxable goods. This court could not agree with the respondent's counsel that para. (e) of column 4 Conditions of Schedule C could empower the DG of Customs to impose "additional condition" (as per condition No. 3 in the exemption certificate). Any condition imposed has to be other than the conditions already stated in column 4 Conditions of Schedule C. The DG of Customs could not add or change the words in Schedule C, neither could the DG of Customs impose additional conditions over the conditions which have already been stated. If there is any change to the wording of Schedule C, it has to be done by proper legislation, such as *via* the Exemption (Amended) Order 2022 (PU(A) 380/2022).

[49] Fourthly, the MoF's letter supports the appellant's contention in that the MoF's letter did not state that the manufacture goods have to be finished taxable goods. Although the Ministry later clarified (in a letter dated 8 May 2019) that it was for taxable finished goods, this could not change the fact that the words used in Schedule C were "finished goods".

[50] Finally, the amendment to the Exemption Order 2018 bolsters the contention that the meaning of the original wording in Schedule C column 4 Conditions was not limited to only finished taxable goods, otherwise, there was no necessity to amend the Schedule C in 2022.

Conclusion

[51] For the reasons as stated above, this court, in a unanimous decision, allows the appellant's appeal. This court orders that the reliefs sought in the appellant's notice of hearing of application for judicial review, particularly paras. (1)(a) and (b) be allowed. This court further orders that the order of the High Court dated 6 December 2022 be set aside. This court also order costs of RM20,000 to be paid by the respondent to the appellant.